

**PLANNING AND ZONING COMMISSION
STAFF REPORT**

October 17, 2013



Conditional Use Permit case no. CU13-09: Mohamed and Dorothy Khan

CASE DESCRIPTION: a request to amend a previously-approved Conditional Use Permit for a neighborhood service use (grocery store) on property located in a Residential District – 5000 (RD-5), specifically to allow beer and wine sales for off-premise consumption

LOCATION: 913 East Martin Luther King Jr Street, located at the south corner of East Martin Luther King Jr and Bradley Streets, being Lot 1 in Block 1 of the Keats Subdivision

ZONING: Residential District – 5000 (RD-5)

EXISTING LAND USE: neighborhood grocery store (CU11-09, approved 9/15/2011)

PROPERTY OWNER: William Benford

APPLICANT(S): Mohamed and Dorothy Khan

STAFF CONTACT: Martin Zimmermann, Planning Administrator

SUMMARY RECOMMENDATION: Staff recommends **denying** this request. Please see pages 4 thru 8 of this report for a more detailed description of staff's recommendation.





CURRENT PHOTOS OF SUBJECT PROPERTY:





BACKGROUND:

On September 15, 2011, the Planning and Zoning Commission unanimously approved a Conditional Use Permit request (case no. CU11-09) to allow a neighborhood grocery store on the 0.165-acre subject property, which is zoned Residential District – 5000 (RD-5). The Commission’s action was made subject to the condition that no sales or consumption of alcohol of any kind be allowed on the premises. An excerpt from the minutes of that meeting is attached to this staff report below. Following the Commission’s approval, the property owner, Mr. William Benford, made the required improvements shown on the site plan that was part of that request and which is also attached to this staff report.

Since June 2013, the applicants, Mr. and Mrs. Khan, have been operating a neighborhood grocery store in the 2,100-square foot commercial structure on the property (“Candy Hill C-Store”) which they are leasing from Mr. Benford. The Khan’s have applied to amend the previously-approved Conditional Use Permit, specifically to remove prohibition on alcohol sales. They desire to sell beer and wine for off-premise consumption in their store. Please also refer to a detailed description of the reasons for this request which was submitted by the applicants and is attached to this staff report below.

If the Planning and Zoning Commission approves the request, then the sale of beer and wine for off-premise consumption as part of a neighborhood grocery store would be permitted at this location. Bryan’s Zoning Ordinance generally allows beer and wine sales for off-premise consumption as part of an approved neighborhood service use (Bryan Code of Ordinances Section 130-34(i)(2)d.), so long as all applicable standards for alcohol sales are met. These standards are described in Chapter 6 of the Bryan Code of Ordinances and include locational restrictions such as a 300-foot separation from a church, hospital, private/public school, day care/child care facility and a 1,000-foot separation from private and public schools. The subject property meets all of the aforementioned distance requirements.

RELATION TO BRYAN’S COMPREHENSIVE PLAN:

The City of Bryan adopted a Comprehensive Plan in January 2007. The plan includes policy recommendations related to the various physical development aspects of the community. These aspects are supported by a set of goals and objectives. The Planning and Zoning Commission shall consider the following when making a decision regarding this particular request:

Chapter 5: Land Use

5.5. Land Use Policies

Use-Specific Land Use Policies

Redevelopment and Infill Policies

Policy statements:

The City of Bryan will encourage and promote compatible infill and redevelopment in areas where these activities will benefit the city as a whole and the area specifically.

Land Use Goal #1:

Achieve a balance of land uses within the city.

Land Use Goal #1, Objective A:

Achieve a sustainable mix of land use types in suitable locations, densities and patterns.

ANALYSIS:

Approval of a Conditional Use Permit by the Planning and Zoning Commission shall be based upon the following criteria.

1. Whether the proposed conditional use conforms to applicable regulations and standards established by the Zoning Ordinance.

The neighborhood grocery store conforms to all applicable regulations and standards established by the Zoning Ordinance and the Land and Site Development Ordinance. No variations from existing standards are being requested.

2. Whether the proposed conditional use is compatible with existing or permitted uses on abutting sites, in terms of use, building height, bulk and scale, setbacks and open spaces, landscaping, drainage, or access and circulation features.

Because of its position at the edge of a residential area and adjacent to several vacant lots, staff contends that a neighborhood grocery store use at this location is compatible with existing or permitted uses on abutting sites in terms of use and physical development features. The existing commercial structure is only one story tall, the same as the surrounding residential development. Staff believes that a neighborhood grocery store use at this location is convenient and accessible for residents in the adjacent neighborhood that extends in all directions from the subject property, including Habitat for Humanity's new Faith Subdivision, which is located north of the subject property, across East Martin Luther King, Jr. Street.

3. Whether and the extent to which the proposed conditional use potentially creates greater unfavorable effect or impacts on other existing or permitted uses on abutting sites than those which reasonably may result from the use of the site by a permitted use.

Staff believes that the neighborhood grocery store at this location does not generally create unfavorable effects or impacts on abutting properties. However, the Police Department submitted the following concerns regarding this request:

We do not believe it is in the best interest of the neighborhood to allow beer and wine sales at this location. The store is approximately 645' from New Direction Worship Center at 1104 E. MLK Jr. St., 320' from the daycare located at 910 Dansby, 675' from the Bryan Housing Authority properties and only 512' from King Mart. The point is that this is a lower income neighborhood with a history of individuals sitting around the sidewalks and vacant lots drinking beer and engaging in other illegal activity. We do not see how having another business providing alcoholic beverages to the community can have a positive impact on the development of the community. Mrs. Khan spoke of offering after school tutoring for local children. This alone is an excellent idea but it does not seem to coincide with the sale of beer and wine on the same property. It seems that they may better serve the neighborhood by offering affordable meals that are quick and convenient to obtain and or prepare. There is also the fact that there is a registered sex offender living at 1405 Bradley St which is the house directly behind the store. The Khan's did state that they were willing to fence the property at some point, but that is a future plan that may or may not come to pass. We respect that we do not make the final decision and greatly appreciate

being allowed to offer input. At this time, we do not support the sale of beer and wine at this location.

Staff therefore recommends that the existing condition to not allow sales or consumption of alcohol of any kind on the premises be upheld and the Khan's request to remove the condition denied.

4. Whether and the extent to which the proposed conditional use affects the safety and convenience of vehicular and pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area.

Staff contends that a neighborhood grocery store at this location does not have any adverse effects on vehicular and pedestrian traffic in this vicinity.

5. Whether and the extent to which the proposed conditional use would reasonably protect persons and property from erosion, flood or water damage, fire, noise, glare, and similar hazards or impacts.

No new physical development features are proposed on the property as part of this request; therefore, no additional impact concerning erosion, flood, fire and other hazards are expected.

6. Whether and the extent to which the proposed conditional use adversely affects traffic control or adjacent properties by inappropriate location, lighting, or types of signs.

No new signage is proposed on the property as part of this request.

7. Whether and the extent to which the proposed conditional use provides adequate and convenient off-street parking and loading facilities.

There is adequate and convenient off-street parking on the subject property in conformance with City ordinances.

8. Whether the proposed conditional use conforms to the objectives and the purpose of the zoning district in which the development is proposed.

The Zoning Ordinance allows for certain business establishments to exist in residential neighborhoods so long as the surrounding residential land use is protected from potentially adverse impacts of these businesses. Neighborhood services are one use that the Zoning Ordinance potentially allows in residential districts. Staff believes that, in this particular case, a neighborhood grocery store on the subject property conforms to the objectives and purpose of the RD-5 zoning district by providing limited commercial development opportunities in close proximity to the abutting residential neighborhood and convenient for neighborhood residents in the vicinity.

9. Whether the proposed conditional use will be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

Staff still believes that a neighborhood grocery store is an appropriate use of this property at this location. However, based on the comments received by the Police Department, staff does not believe that, in this particular case, permitting the sale of beer and wine at this location

would contribute to the overall living comfort of the surrounding neighborhood, which is fully-developed with modest single-family housing.

10. Whether the premises or structures are suitable for the proposed conditional use.

Staff believes that the 2,100-square foot commercial structure and the premises are suitable for a neighborhood grocery store.

RECOMMENDATION:

Staff recommends **denying** this request.

REASONS FOR REQUEST SUBMITTED BY THE APPLICANTS:

Conditional Use Permit Supplement E



CITY OF BRYAN
The Good Life, Texas Style.

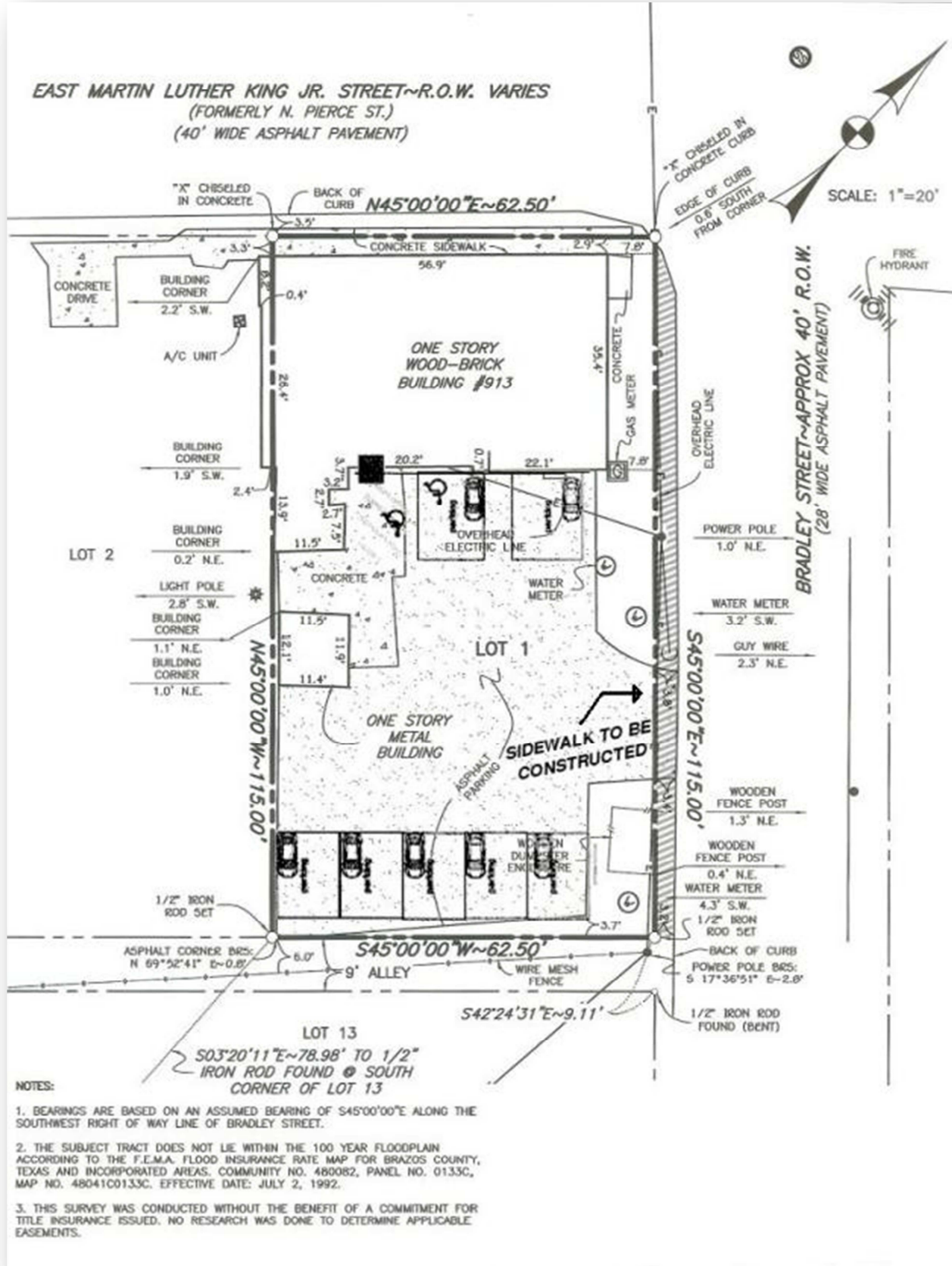
Minimum Requirements:

☐ 15 Folded copies of Site Plan

Please list the reasons for this conditional use permit request:

We open Candy Hill Convenience Store on 7-1-13 with the expectation of being competitive with the other businesses in area. To accomplish that we not only have to be competitive in pricing but the products we offer. After 2.5 months we have found that our ability to compete with the business in our area is severely limited because we can't sell alcohol in our convenience store. We are requesting that we the new owners & operator of Candy Hill C-store be allowed to sell / apply for Wine & Beer Retailers off Premise Permit (B6). Factors to consider (1) new ownership (2) new ownership standing in community (3) no criminal problems relating to issues previously discussed regarding this property (4) No problem with law enforcement 2.5 months (5) Owners willingness to work with both the city & law enforcement to improve the community (6) Ongoing current path to ownership of property (Attorney Payne Law Group) should be done by Oct. meeting. We operate M-T-R 7:15-8:30pm W-F, S 7:15-10pm; Sunday 9am-7:30pm. (Wed. off once we get lottery). Hours may change Spring-Summer & Fall & winter. None of previous occupants or family is associated with us.

SITE PLAN APPROVED WITH CASE NO. CU11-09:



EXCERPT FROM P&Z REGULAR MEETING MINUTES OF SEPTEMBER 15, 2011:

5. Conditional Use Permit CU11-09: William Benford

M. Audenaert

A request to allow a neighborhood service use (grocery store) on property located in a Residential District – 5000 (RD-5) zoning district, specifically on property at 913 East Martin Luther King, Jr Street, located at the southeast corner of Martin Luther King Jr. and Bradley Streets, being Lot 1 in Block 1 of the Keats Subdivision in Bryan, Brazos County, Texas.

Ms. Michelle Audenaert presented the staff report (on file in the Development Services office). Staff recommends approving the request **subject to the following condition:**

- **No sales or consumption of alcohol of any kind be allowed on the premises**

The public hearing was opened.

Ms. Deborah Toliver, 1002 East Martin Luther King Jr, spoke in favor of the request.

The public hearing was closed.

Commissioner Jones moved to approve Conditional Use Permit CU11-09 subject to the condition that no sales or consumption of alcohol of any kind be allowed on the premises and to adopt the written staff report and analysis, as the report, findings and evaluation of this Commission. Commissioner Bond seconded the motion.

Chairperson Beckendorf asked if there was any discussion. There was none.

The motion passed with a unanimous vote.